IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 2212 OF 2007

Wasim Savle Shaikh. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Amin Solkar with S.M.Yakub for the applicant.

Ms.S.D.Shinde, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 27th July 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. By this application, the applicant seeks to be released on bail in Sessions Case No.837/2006. The applicant was arrested in a case registered with Kurla Police Station, Mumbai for the offences punishable under sections 302 read with section 34 of Indian Penal Code. He is presently in judicial custody.

3. The prosecution case in brief is that accused No.1 booked a room with G.S.K. Hotel, Kurla on 22nd April, 2006. On the next day, i.e. 23rd April, 2006, in the morning, the first informant Anup Dubey, who was Waiter in the hotel, had seen accused No.1 along

with a burkha clad woman coming out of room No.201. At about 2.00 p.m., the complainant saw accused Nos.1 and 2 going out and coming back within 15 to 20 minutes. At about 4.00 p.m. deceased Rajesh came to the hotel. Accused Nos.1 and 2 took me to the said room. That is how all the three persons at a time were seen in the said room. After about 45 minutes accused Nos.1 and 2 were seen leaving the hotel but the deceased was not seen with them.

4. At about 10.00 p.m., the complainant knocked the door, which was closed from inside but there was no response. Thereafter, the police was called. The dead body of third person, who had come there at about 4.00 p.m., was seen. As per the post mortem report, deceased Rajesh had died due to smoothering. After that F.I.R. was lodged and accused Nos.1 and 2 came to be arrested.

5. Accused No.3- Sarfaraz Nasir Khan has been granted bail by this Court vide order 2nd March, 2007; wherein this Court has observed as under:

> ". Admittedly, there is no eye witness of the incident. the case is based on circumstantial evidence only, and as per the F.I.R. at 4 p.m. accused Nos.1 and 2 and the deceased were seen entering into the room but only accused; Nos.1 and 2 were seen leaving the hotel. The present applicant, who is accused No.3, was seen in the room at about 2 p.m. Admittedly, there is no material to show that the present application was also present in the room at about 4 p.m. when the deceased had come there. Taking into consideration

these circumstance, I find that case against the present applicant can be distinguished from the case against accused Nos.1 and 2. Therefore, bail may be granted to him."

[Emphasis supplied]

6. Reading of the aforesaid para would show that so far as accused Nos.1 and 2 are concerned, role played by both, in commission of offence, was found to be on par with each other, whereas role played by accused No.3 was sought to be distinguished from that of accused Nos. 1 and 2.

7. The bail application of accused No.2 has already been rejected by this Court vide order dated 13th July, 2007 relying on the Test Identification Parade and the statement made by one of the witnesses, namely, Shri Hari Balkrishna Iyer.

8. It is, thus, clear that role played by accused No.1 and that of accused No.2 is almost identical. In that view of the matter, present applicant cannot succeed in getting bail either on parity with accused No.3 or on merits. Thus, bail application is rejected. However, the trial be treated as expedited one.

9. The observations made hereinabove are prima facie.

JUDGE